

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Debra L. Harvey, et al.,)	No. CV 08-17-TUC-FRZ (HCE)
)	
Plaintiffs,)	ORDER
)	
vs.)	
)	
Janet Napolitano, Governor, et al.,)	
)	
Defendants.)	

Pending before the Court is Defendants' motion to dismiss. On August 28, 2008, United States Magistrate Judge Hector C. Estrada issued a Report and Recommendation recommending that the motion be granted.

The Report and Recommendation indicated that any party could file written objections within ten days after being served with a copy of the Report and Recommendation. The parties have not filed any objections to the Report and Recommendation.¹ As such, the Court will not consider any objections or new evidence. *See generally United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(*en banc*)(failure to timely file objections to any

¹The Court notes that Plaintiffs filed a document entitled "comments upon the terminology used in report and recommendation." The comments were a few short sentences and did not contain any objections to the Report and Recommendation. Rather, the thrust of the brief comments was that Plaintiffs entitled certain documents as "Amendment to Complaint" and "Amended Complaint" whereas the Report and Recommendation referred to those documents as "Amended Complaint" and "Second Amended Complaint." Plaintiffs requested that the Court use Plaintiffs' terminology. The terminology used is not important as it is clear to the Court and should be clear to all parties that the dismissal recommended in the Report and Recommendation pertains to the most recent "amended complaint" that was officially filed (*see* Doc. #37) pursuant to Magistrate Judge Estrada's Order (*see* Doc. #35) granting Plaintiffs' motion for leave to file an amended complaint (*see* Doc.#31).

1 factual or legal determination of the Magistrate Judge may be considered a waiver of the
2 party's right to *de novo* consideration of the issues).

3 The Court has reviewed the entire record and concludes that Magistrate Judge Estrada's
4 recommendations are not clearly erroneous. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72;
5 *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); *Conley v. Crabtree*, 14
6 F. Supp. 2d 1203, 1204 (D. Or. 1998).


7 Accordingly, IT IS HEREBY ORDERED as follows:

8 (1) United States Magistrate Judge Estrada's Report and Recommendation (Doc. #36) is
9 **accepted and adopted.**

10 (2) Defendants' motion to dismiss is granted; the amended complaint (Doc. #37) is dismissed
11 as to all named Defendants without prejudice.

12 (3) The Clerk of the Court shall enter judgment accordingly.

13 DATED this 17th day of September, 2008.

14
15
16
17 
18 FRANK R. ZAPATA
19 United States District Judge
20
21
22
23
24
25
26
27
28